

**IN THE UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION**

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|-------------------------------|---|-------------------------------------|
| IN RE: | § | |
| | § | Bankruptcy Case 08-53542-LMC |
| CARLOS CRESPO VASQUEZ, | § | |
| | § | Chapter 13 |
| Debtor. | § | |

**RESPONSE OF THE UNITED STATES OF AMERICA, INTERNAL REVENUE
SERVICE, TO THE OBJECTION TO CLAIM OF DEPARTMENT
OF THE TREASURY—INTERNAL REVENUE SERVICE**

Comes now the United States of America, Internal Revenue Service (“IRS”), by and through the United States Attorney for the Western District of Texas, and files its Response to the Objection to Claim of Department of the Treasury—Internal Revenue Service (Docket No. 29) (the “Objection”) filed by Carlos Crespo Vasquez (the “Debtor”) and requests that the Court deny the relief requested in the Objection. In support of this Response, the United States, IRS would show the following:

1. The Debtor filed a petition for relief on November 25, 2008. The Debtor’s Chapter 13 Plan has not been confirmed as of the date of filing this Response.
2. The IRS filed its original proof of claim on or about December 15, 2008, asserting a claim in the total amount of \$125,207.76, reflecting the Debtor’s outstanding personal income tax liability for various tax periods occurring from 2002 through 2008. Of that amount, \$86,091.89 is asserted as a priority unsecured claim pursuant to 11 U.S.C. § 507(a)(8), and \$39,115.87 is asserted as a general unsecured claim. On or about May 11, 2009, the IRS filed its first amended proof of claim, reducing the total amount of the IRS claim to \$59,371.44. Of that amount, \$41,803.46 is asserted as a priority unsecured claim pursuant to 11 U.S.C. § 507(a)(8), and \$17,567.98 is asserted as a general unsecured claim.
3. On May 5, 2009, the Debtor filed the Objection, objecting to the proof of claim filed by

the IRS and requesting that this Court deny the claim of the IRS.

4. The United States, IRS responds as follows to the Debtor's Objection:

5. The United States, IRS, admits this case was filed on November 25, 2008. The United States, IRS, is without sufficient information to admit or deny the balance of the allegations set forth in paragraph I of the Objection and, therefore, for the purpose of this Response, denies the same.

6. The United States, IRS, admits that it filed its original proof of claim on or about December 16, 2009, asserting a claim in the total amount of \$125,207.76, including an unsecured priority claim in the amount of \$86,091.89 pursuant to 11 U.S.C. § 507(a)(8). The United States, IRS, denies that it filed an unsecured priority claim pursuant to 11 U.S.C. § 507(a)(8) in the amount of \$125,207.76. The United States, IRS, denies the balance of the allegations of paragraph II of the Objection.

7. The United States, IRS, admits the Debtor submitted certain income tax returns (Form 941) for tax quarters occurring during from 2002 through 2006 (the "Returns") on or about April 15, 2009. The United States, IRS, is without sufficient information to admit or deny the balance of the allegations set forth in paragraph III of the Objection and, therefore, for the purpose of this Response, denies the same.

8. By way of further response, the United States, IRS, would show that the Debtor did not submit the Returns until April 15, 2009. The Returns were submitted for processing, but have not been fully processed by the IRS. The United States, IRS, will amend its claim as appropriate once the Debtor's Returns are fully processed, but until that time cannot amend its claim further.

9. Furthermore, the Debtor has not filed any of the required employer tax returns (Forms 941 and 940) for tax periods occurring during 2007 and 2008. In the event that the Debtor files

10. Additionally, disallowance or denial of the claim of the IRS is not appropriate under the facts set forth in the Objection. By the Debtor's own admission, the IRS does have a claim for pre-petition tax liability, although the Debtor disputes the amount. *See* Objection at ¶ III (stating that returns filed by the Debtor show a liability of approximately \$10,885.95). Therefore, disallowance or denial of the claim of the IRS as the Debtor has requested is not appropriate or equitable in this instance. Therefore, the Debtor's objection should be overruled.

WHEREFORE, premises considered, the United States, Internal Revenue Service, respectfully requests that this Court overrule the Debtor's Objection to Claim of Department of the Treasury—Internal Revenue Service and grant such further and other relief as may be just and equitable.

DATE: May 12, 2009

Respectfully submitted,

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CERTIFICATE OF SERVICE

This is to certify that a true copy of the foregoing was served upon the parties on the listed below by the Clerk's Office electronic notice facilities and/or by first class mail, postage prepaid, on this 12th day of May, 2009.

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